

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211171**DATE:** August 1, 1983**MATTER OF:** ISS Energy Services, Inc.**DIGEST:**

When the protester does not show a violation of established procedures, a protest against agency's cost comparison in a solicitation conducted under the Office of Management and Budget Circular A-76 is denied.

ISS Energy Services, Inc. (ISS), protests the Federal Aviation Administration's (FAA) decision to perform services in-house after the FAA's evaluation of bids submitted under invitation for bids (IFB) No. DTFA03-82-B-00028.

We dismiss the protest in part as untimely and deny it in all other respects.

The IFB solicited bids for "metal/mechanical" services at the FAA Technical Center in Atlantic City, New Jersey. The solicitation was for a cost comparison in accordance with Office of Management and Budget Circular A-76 (Circular) and the "Cost Comparison Handbook" (Handbook) to determine whether the FAA should continue to perform the services in-house rather than contract out for them. Both the Circular and Handbook were incorporated into the solicitation.

ISS submitted a base bid for \$667,161 which was adjusted during cost comparison to \$741,731. At the time of bid opening on September 14, 1982, the Government's estimated in-house cost was \$688,632. This estimate was later reduced to \$665,067. The FAA decided on the basis of its cost comparison, which showed ISS's price to be \$76,664 higher than the in-house estimate, to continue the work in-house.

After exhausting its administrative appeals within the Department of Transportation, ISS filed a protest with our Office. In this protest, ISS

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challenges the decision to keep the work in-house on a number of grounds and asks that we recommend award of a contract to it.

Generally, we will not review an agency's decision to perform work in-house rather than contract out. Midland Maintenance Inc., B-202977.2, February 22, 1982, 82-1 CPD 150. However, when a Government agency uses the procurement system to aid in its decisionmaking, we will review the agency's adherence to the procedures it outlined in the solicitation in determining whether a contract would be awarded. RCA Service Company, B-208204.2, April 22, 1983, 83-1 CPD 435.

First, ISS protests the Government's reduction of the in-house cost estimate after bid opening and contends that this reduction was in the nature of an impermissible late bid modification. The protester now claims that it, too, has erred in its bid and asks that its bid be lowered by \$90,000.

The Handbook outlines in detail the steps to be taken with the cost estimate. Once bids have been opened, the sealed cost estimate is opened. If the low bid is lower than the in-house cost estimate, a detailed cost comparison is required. One of the first steps in this procedure is an independent audit of the Government estimate. Errors in the estimate which are found during this review can be corrected. This is the exact procedure followed by the agency in this instance; therefore, the protest against the changed estimate is without merit.

We understand that the protester's mistake claim is based on the argument that the company erroneously failed to use the lower wage rates employed by the Government in its cost comparison. The protester's failure appears to relate to an error in judgment for which no relief may be allowed. See Handy Tool & Manufacturing Co., Inc., 60 Comp. Gen. 189, 81-1 CPD 27. Moreover, we note that on page 21 of the Handbook, the Government indicated the wage rates it would use in the cost comparison by stating that for "positions that are not occupied * * * [the Government would use] wage step 3 for Wage Board positions." Therefore, it appears that ISS should have been on notice before bid opening of the wage rates that it now claims it should have employed.

Moreover, any question about the adequacy of the stipulated wages--an issue also raised by ISS--should have been raised before bid opening under our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(1) (1983).

Second, ISS challenges the calculations in the Government estimate and asserts that the required work cannot be done for that amount. Specifically, the protester claims that the Government has underestimated the amount of overtime pay needed (by \$30,000), used unrealistic wage figures (low by \$26,600), and included estimated vehicle costs which will not meet the vehicle needs shown in the solicitation (\$60,000 low according to the protester).

The protesters claim that the Government has underestimated the amount of overtime needed is based on the protester's estimate of 892 man-hours of overtime annually. The Government's estimate of 125 man-hours per year was based on the historical needs for these services and was included in the statement of work in the IFB. Since the protester knew this ground of its protest prior to bid opening, but did not raise it until after bid opening, the protest is untimely with respect to this issue. See 4 C.F.R. § 21.2(b)(1) (1983).

The claim that the Government wage estimate is unrealistic is based on two contentions. First, the agency used September 1982 wages rather than current wages to determine its costs. Second, the agency expected to hire 2.84 additional experienced workers in metal/mechanical services; the protester asserts that the calculations should, instead, have been based on the number "3" rather than the number "2.84."

None of these allegations, if true, can be attributed to failure by the agency to follow the Handbook. The Handbook clearly states that wage expenses should be based on actual wages (September 1982 for a September 14, 1982, bid opening) for current employees. Furthermore, the Handbook does not preclude the use of partial work-years to calculate labor cost. Moreover, as to the use of the "2.84" figure, we cannot question FAA's position on this issue, which is that:

"In pricing only 2.84 man-years in addition to the 3 employees on board, the Government is saying that it can use a portion of one employee's time for other purposes when not required for metal/mechanical. In this case only the maintenance part of the metal/mechanical shop is under consideration for contracting out. The balance of the metal/mechanical shop continues in-house in support of Research and Development (R&D) projects. The Government can switch employees from maintenance projects to the R&D projects as workload warrants. This is an economy that the Government can realize if the functions remain in-house. The contractor could also realize this economy if he had other projects within a reasonable commuting distance enabling his employees to be switched between projects. Therefore, the pricing of only 2.84 additional man-years instead of 3 additional employees for the in-house estimate is proper."

The protester's allegation that the Government miscalculated its vehicle costs is also without merit. The protester claims that the Government must purchase six new vehicles to fulfill the requirements of the solicitation. The Government has found that it can continue to perform the work with partial use of a 1978 pickup and two 1972 "Cushman Trucksters." As stated by the FAA:

"Although the contractor will need to have a vehicle available 100 percent of the time, the Government can affect an economy by sharing vehicle usage. The pickup is shared not only with the other portion of the metal/mechanical shop which supports the R&D technical program, but also with other maintenance shops. The two Cushman Trucksters are shared with the other portion of the metal/mechanical shop. * * * These vehicles are very economical to operate. In conclusion, the vehicle costs have been properly calculated and no basis was found which indicated that the costs should be higher."

In the absence of more compelling evidence, we cannot second-guess the agency's determination.

Next, the protester complains that the Government has underestimated tax income from contracted services and has erroneously determined contract administration costs, one-time conversion costs, and charges for Government employee dismissals.

The issue of underestimated tax rates arises from a disagreement as to how one should classify metal/mechanical services under the cost comparison tax rate charts. The protester claims its tax assessment should be estimated using the 3-percent rate applied to "Manufacturing: metal working machinery." This higher rate would, of course, generate higher tax revenues under contracting out. The FAA claims that metal/mechanical services is a cross between "Construction: other special trades" and "Services: miscellaneous services" not elsewhere classified, both of which carry a 1-percent tax estimate rate. We cannot conclude from the facts before us that the agency erred in applying the 1-percent tax rate.

ISS further alleges that the agency added excessive contract administration charges to its bid by using the maximum allowable 6 percent. The Government responds that it is permitted to charge 6 percent when there is precise and supportable evidence that administration costs will in fact meet or exceed that rate. This is true if the estimated costs are based on a "formal Government quality assurance plan" with detailed quality control requirements spelled out in the solicitation. OMB Circular A-76, Transmittal Memorandum No. 6, January 26, 1982. In this case, the agency did not establish its own quality control requirements, rather, it required the contractor to create its own plan and to furnish the agency with copies. Given this fact, the agency was not justified in charging any more than 4 percent for contract administration costs. The figure of \$37,302 for contract administration should have been \$24,868, and the protester's adjusted bid should have been lowered by \$12,534 to \$729,197.

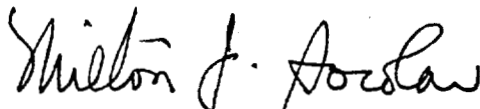
The protester has also claimed that the Government calculated its one-time conversion costs by using the wrong

figures. ISS claims the Government should have used 10 percent of its current personnel costs rather than a 12-percent figure allegedly used to calculate the conversion costs. In fact, the Government used 10 percent of its estimated personnel costs for the contract period as required by the Handbook. The ISS claim is without merit in this respect.

The final ISS claim is that the Government has penalized it by adding the estimated cost of releasing a Government employee to its bid. ISS asserts that it will hire additional personnel to do this job and that, under the terms of the solicitation, the former Government employee would be the first to get a job offer. Although it is true that ISS would have to offer employment to the former Government employee, we cannot find that the agency erred in adding severance pay, given the agency's finding that its present employees "would be reluctant to take a job" with ISS. Severance pay, therefore, was properly considered in the cost comparison.

Inasmuch as the Government's only error in the cost comparison involved only \$12,534 and the Government's in-house estimate remains lower by \$64,130, we deny the protest against retaining this work in-house.

Protest dismissed in part and denied in part.

for 
Comptroller General
of the United States